

EXHIBIT 14

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4

5 FACEBOOK, INC.,)
6)
7 Plaintiff,) Case No.
8 vs.) 5:08-cv-05780 JW (JCS)
9)
10 POWER VENTURES, INC., a)
11 Cayman Island Corporation;)
12 STEVE VACHANI, an individual;)
DOE 1, d/b/a POWER.COM,)
DOES 2-25, inclusive,)
Defendants.)
_____)

13
14
15 CONFIDENTIAL
16

17 VIDEOTAPED DEPOSITION of POWER VENTURES,
18 INC.'S 30(b)(6) Designee STEVEN VACHANI taken on behalf
19 of Plaintiff, at Orrick, Herrington & Sutcliffe LLP, 405
20 Howard Street, 10th Floor, San Francisco, California
21 beginning at 9:13 a.m., Monday, January 9, 2012, before
22 CHERREE P. PETERSON, RPR, CRR, Certified Shorthand
23 Reporter No. 11108.
24
25

1 -- he's not available. So I haven't talked to him.
2 He's not -- we have no intention right now to try to,
3 you know, locate him to be in at trial.

4 MR. CHATTERJEE: What number are we on, 193?

10:56 5 THE REPORTER: 193.

6 (Plaintiff's Exhibit No. 193 marked for
7 identification.)

8 Q. BY MR. CHATTERJEE: Unlike some of the other
9 ones, we have a certified translation.

10:56 10 A. Yeah, this is the e-mail I was just referring
11 to.

12 Q. Okay. So let me just ask you so the record's
13 clear. Document number 193, what is this?

14 A. So this -- on April 24th, 2011, as you know,
10:57 15 that was -- that was the month when we were -- we had
16 made the decision to remove Power.com, you know, off --
17 take it offline. And at that -- you know, it was a
18 cost-cutting measure. And we also had -- were not in a
19 position to make payments on our servers and we were --
10:57 20 we didn't know how many days -- it was already past the
21 date to be removed so -- to be shut off. And so we had
22 went to a -- we were going through a process of trying
23 -- of backing up everything on another server. And the
24 way -- the only way to back it up was had to be
10:57 25 transferred so -- through the internet. So it was a

1 -- it was inside of -- it was an Orkut app. So it had
2 nothing to do -- it was completely unrelated. It was
3 launched about a year earlier I think or six months.

4 Q. But there was a functionality that Power
11:01 5 Ventures had that worked not only on Orkut but was used
6 to work on other web sites as well?

7 A. Yeah. Well, worked on many sites. Orkut was
8 our largest -- user base was on Orkut. So that's why we
9 refer to -- a lot of our biggest innovations were on
11:01 10 Orkut just because that's where our largest user base
11 was.

12 Q. Right. So here it says is the basis of the
13 Orkut app PowerFriends.

14 A. Correct.

11:01 15 Q. Is it your testimony that that Orkut app was
16 only used on Orkut?

17 A. Yes. That -- that app was only used on Orkut
18 and it was a much earlier time than even -- we're not
19 even involved in Facebook. So the -- the PowerFriends
11:01 20 app is completely irrelevant to any discussions
21 whatsoever, you know, I think, relating to Facebook.
22 It's a --

23 Q. As of April 17th, 2011, the logger database
24 existed?

11:02 25 A. It existed on the -- yeah, on the server. It

1 was available and accessed in whatever -- if anything,
2 it was referenced in any questions. If -- I don't know
3 if that was specifically where -- but it was -- it was
4 -- it existed until that date, that's correct.

11:02 5 Q. Okay. And then following that you made the
6 decision to delete that database?

7 A. Yeah. As you can see, the dialogue there we
8 didn't have the time with -- to transfer it before our
9 servers would be shut off. So they -- the decision was
11:02 10 transfer all the most valuable stuff and if we have time
11 and they're not shut off, do these two last.

12 Q. Other than what's stated in this e-mail, do
13 you know specifically what was in the logger database?

14 A. I do not know specifically. This was why I
11:02 15 asked that question right there.

16 Q. But other than what's stated here?

17 A. I -- I do not know.

18 Q. So as you sit here today, you don't know, for
19 example, if the logger database would track event
11:03 20 invitations sent through links to -- to Facebook users?

21 MR. FISHER: Objection. Vague. Assumes facts
22 be in evidence.

23 THE WITNESS: What I do --

24 MR. FISHER: Lacks foundation. Incomplete
11:03 25 hypothetical.

1 always believed that and we were exploring in those ways
2 what would -- what we do if a user wants to get their
3 data. And -- and this was a -- an exploration.

4 Q. Let me establish some foundation around this,
12:07 5 Mr. Vachani. You said in this instant message "we also
6 need to do some planning to make sure that we do it in a
7 way where we are not really detected," correct?

8 A. That's correct.

9 Q. And the reason that you said that was because
12:07 10 you didn't want web sites like Orkut to detect what you
11 were doing, right?

12 A. Not to detect. If -- if they attempted to
13 block, block the -- the sites, we wanted to understand
14 what are the issues.

12:07 15 Q. And you wanted to be able to interfere with
16 their ability to block you, right?

17 MR. FISHER: Objection. Vague.
18 Argumentative.

19 THE WITNESS: To interfere with their ability
12:07 20 to block, no. I'm saying -- we -- this -- exactly what
21 it says here. We had a -- we had a hypothetical
22 conversation about -- about the issues relating to data
23 extraction where users wanted to access their own data.

24 Q. BY MR. CHATTERJEE: And you knew that the web
12:07 25 sites that were housing that data wouldn't like what you

1 were doing.

2 A. We didn't know --

3 MR. FISHER: Objection. Calls for speculation

4 --

5 THE WITNESS: We didn't know if they would

6 like --

7 THE REPORTER: Okay. Whoa. I'm sorry.

8 Please restate your --

9 THE WITNESS: We didn't know if they would

10 like it or not --

11 THE REPORTER: I'm sorry. Hold on. Please.

12 MR. FISHER: Vague. Assumes facts not in
13 evidence. Lacks foundation. Incomplete hypothetical.
14 Argumentative.

12:08 15 THE WITNESS: Okay. We didn't -- we have no
16 idea what they were -- this is 2005. But we know that
17 if -- if a user is -- obviously some sites and it turns
18 out Facebook that, you know, in the future was -- was
19 not Orkut. It was -- you know, Facebook does not -- did
12:08 20 not want users to export their own data. And while --
21 and we have always stated very publicly and clearly that
22 we believe that users, you know, do have rights to
23 access their data. So we were exploring and
24 understanding what are the potential reactions that
12:08 25 sites could have. This was a -- this was a hypothetical

1 something that while it's a right and something that's
2 been established that users have the right to do, not
3 every site -- not every site wants users to -- to be
4 able to get their own -- access their data. Obviously
12:11 5 Facebook being one of the greatest, you know, companies
6 that have traditionally been against -- been against
7 this publicly. You know, users trying to access their
8 own data. This is -- this is something that we -- we
9 always understood that, you know, just because it's --
12:11 10 it's correct and it's okay for users to access their own
11 data doesn't mean that every site will -- will allow
12 users to access their own data.

13 Q. So you knew that the web sites may not like
14 having users access and export data?

12:11 15 A. Historically importing data has never been --
16 has never -- many sites have always objected to it and
17 it -- and despite that fact, it has been going on for
18 ten years and been a commonly-accepted practice.

19 Q. I understand that. But you -- you understand
12:12 20 that even at the time you wrote this instant -- or the
21 portions of this instant message chat log that web sites
22 were often against exporting data from their web site to
23 another place?

24 MR. FISHER: Objection. Vague. Calls for
12:12 25 speculation.

1 THE WITNESS: I understood that. And I also
2 understood that -- that's correct.

3 Q. BY MR. CHATTERJEE: Okay. That's correct.
4 And so one of the things that you wanted to do was to
12:12 5 have multiple IP addresses to allow for the extraction
6 of data without the ability of those web sites to block
7 you; isn't that fair?

8 A. If a user authorized that -- that, correct.
9 That's something we've -- we've always said.

12:12 10 Q. Okay. And -- and you said in -- in this chat
11 log "since we will only have one chance to do it."

12 What did you mean by "we will only have one
13 chance to do it"?

14 A. I believe that we were -- we were just sharing
12:13 15 -- conversation that -- that accessing -- importing
16 data, you know, we wanted -- we wanted to do it right.
17 You know, we wanted to make sure that if a user wanted
18 to access their own data that they would be able to do
19 it. That's basically that -- we understood that import
12:13 20 -- importing data is a sensitive -- is a sensitive
21 subject, despite the fact that we strongly believe its
22 the user's right. And that's basically what this
23 discuss -- discussion was about.

24 Q. Okay. Farther down you say "lets" "plan on
12:13 25 getting the data grab done as soon as possible."

1 not necessary as we....

2 Q. So when this lawsuit was filed, did you e-mail
3 the various power.com members and ask them to preserve
4 documents?

13:54 5 A. Did I e-mail? I mean, you have my e-mails,
6 so. I mean, I don't -- I don't think there was a --
7 there was no law -- there was no law -- there was a -- I
8 mean, I -- I don't know what -- what -- what we said to
9 them, but it would be -- it would be my -- everything is
13:54 10 in my e-mail.

11 Q. Do you recall ever instructing the power.com
12 employees not to -- not to destroy documents?

13 A. It's our standard policy no one -- not to
14 destroy documents. No one's -- as far as I know, no
13:55 15 one's -- no one's taken any direct effort to destroy
16 documents.

17 Q. Did -- but my question's really precise. When
18 the litigation was filed did you send out a reminder or
19 tell anyone not to destroy documents?

13:55 20 A. Which? You mean the Facebook litigation?

21 Q. Yeah.

22 A. No, I didn't.

23 Q. Okay. And was there any particular reason why
24 you didn't do that?

13:55 25 A. There was no -- it was just a standard --

1 Q. I'm going to ask you the question one more
2 time.

3 A. But I --

4 Q. No. Mr. Vachani, you can either answer it or
15:27 5 you can't. If you can't answer it, tell me you can't
6 answer it.

7 You knew that the Facebook terms of service
8 did not allow Power users to access the Facebook web
9 site in the way Power wanted to do it; isn't that right?

15:28 10 MR. FISHER: Objection. Assumes facts not in
11 evidence. Lacks foundation. Argumentative. Vague.

12 THE WITNESS: And I would like to -- once
13 again, I would like to ask you the previous question,
14 can you repeat my answer? I -- I'm not answering your
15:28 15 question yet. I'm asking her to repeat the answer I
16 made to your previous question which was similar.

17 MR. CHATTERJEE: Okay. Let's take a break.
18 Tim, we're doing our meet and confer right now.

19 THE VIDEOGRAPHER: We are going off the
15:28 20 record. The time is 3:28 p.m.

21 (Whereupon a break was taken from 3:28 to
22 3:37.)

23 THE VIDEOGRAPHER: We are back on the record.
24 The time is 3:37 p.m.

15:37 25 THE WITNESS: So I previously wanted -- I

1 similar process where almost -- where -- where almost,
2 for example, Google has a clause that states in their
3 things that users cannot do it, but Facebook has
4 continued to do it. And -- and I'll ignore these
15:40 5 things.

6 And I said about five minutes ago -- let me
7 finish, please.

8 Q. BY MR. CHATTERJEE: Finish.

9 A. I said five minutes ago that terms and
15:40 10 conditions are created by -- by a site. And the
11 decision -- the decision on -- on interpreting those
12 terms and conditions and how companies choose to respond
13 to their users have been and continue to be very
14 subjective. Facebook has been very subjective, Power
15:40 15 has been very subjective, and there is no legal
16 precedent. So we can have a discussion all day on this
17 issue. But I've answered the question to you that I --
18 we are very familiar and have read Facebook terms and
19 conditions.

15:41 20 Q. Okay. Let's step back. You said you've read
21 Facebook's terms and conditions. That was prior to
22 accessing the Facebook web site as pursuant to the
23 December 2008 launch, correct?

24 A. Yes.

15:41 25 Q. Did you believe under your reading of the

1 looked at the industry as a whole, and we saw no -- no
2 precedent for -- you know, on these issues and therefore
3 felt that if it was an issue, this is something that
4 would be determined -- and it has been determined by the
15:42 5 courts. Finally, I -- I believe --

6 Q. BY MR. CHATTERJEE: Okay. There -- there
7 might be some confusion in my question.

8 A. Okay.

9 Q. I'm not asking about anything other than the
15:42 10 terms of service. Just that standing alone.

11 A. Okay.

12 Q. Was there any concern in your mind when you
13 read that terms of service that the way Power wanted to
14 access the Facebook web site would be a violation of
15:43 15 Facebook's terms of service?

16 MR. FISHER: Objection. Vague. Calls for a
17 legal conclusion.

18 THE WITNESS: I would agree calls -- you're
19 asking for a legal conclusion that I'm not able to --

15:43 20 Q. BY MR. CHATTERJEE: I'm just asking you for
21 whether there was any concern in your mind, not whether
22 there's a legal violation.

23 A. Concern is irrelevant. You know, this is --
24 you're asking me --

15:43 25 Q. Mr. Vachani, it is not a matter of you to

1 determine relevance or not.

2 Was there a concern in your mind or not?

3 A. Was there a concern?

4 MR. FISHER: Same objections. Argumentative.

15:43 5 THE WITNESS: I think our company's actions
6 speak for themselves. Because, you know, I'm -- I was
7 the CEO of the company. And the company -- the company
8 made a -- made a -- made a decision which I've already
9 articulated, testified, and -- and I've also -- we've
15:43 10 also had years -- we've had years of discussions on this
11 issue, we've had court rulings on this issue, and you
12 continue to ask the same question which I think we're --
13 we're -- you know --

14 Q. BY MR. CHATTERJEE: It's because you're not
15:43 15 listening to my question. I'm going to move on.

16 A. I am listening to my question.

17 Q. You aren't. We're going -- Mr. Vachani --

18 MR. FISHER: There's no point to arguing about
19 this. Go to the next question.

15:43 20 Q. BY MR. CHATTERJEE: -- we're going to go to
21 court over this. We're going to have these questions
22 answered.

23 A. Do you mind asking the question one more time?

24 Q. You're not answering them now. No. I'm --
15:44 25 I'm done. I've asked it ten times. You don't want to

1 not mistaken. I don't even know the issue. But the
2 main thing is we -- we -- we didn't know what -- we
3 didn't really know what Facebook's reaction would be.

4 Q. All right. So if I understand you correctly,
16:23 5 by this point in time you had reviewed Facebook's terms
6 of service and you may have received a cease and desist
7 letter from Facebook?

8 A. I think it was either this day or the day
9 after. I'm not a hundred percent sure what day it was.

16:23 10 Q. And around that time frame Mr. Santos stated
11 he'll prepare for a possible block by Facebook?

12 A. Oh, he was -- he was trying to evaluate the
13 systems if -- if our -- if our system is unable to
14 access Facebook.

16:23 15 Q. Was there any doubt in your mind when he said
16 that that Facebook was considering or may block Power
17 from accessing the Facebook web site in the way that it
18 did?

19 MR. FISHER: Objection. Vague.

16:24 20 THE WITNESS: Obviously -- obviously they --
21 they had sent a -- a legal -- a legal threat. They had
22 sent a legal threat. So, I mean, there -- there --
23 there were definitely, you know, possibilities.

24 Q. BY MR. CHATTERJEE: So you knew that they
16:24 25 didn't feel that Power was authorized to be accessing

1 Facebook in the way that Power was doing?

2 A. We knew that Facebook had -- Facebook had
3 expressed, you know, their opinion that they -- that's
4 correct.

16:24 5 MR. CHATTERJEE: We're getting to an easier
6 part for a little while. 218.

7 (Plaintiff's [Exhibit No. 218](#) marked for
8 identification.)

9 THE WITNESS: Okay.

16:25 10 Q. BY MR. CHATTERJEE: Okay. The document I've
11 given you as Exhibit 218, what -- what is this document,
12 Mr. Vachani?

13 A. What is this document? This is a -- looks
14 like -- this looks like an e-mail from Facebook.

16:25 15 Q. This is an e-mail that you received?

16 A. This e-mail that I received. I don't know if
17 this was a test e-mail or if this was from -- you know,
18 from Facebook. I don't know that. But it looks like it
19 was from Facebook.

16:25 20 Q. And it was to you?

21 A. Yep.

22 Q. And then the subject line has "Ghostday
23 Leandro Abreu," A-b-r-e-u.

24 A. Yeah. This is an e-mail from Facebook.

16:26 25 Q. And Leandro Abreu was -- we -- we talked about

1 30(f)(1)).

2 Before completion of the deposition, review of
3 the transcript (XX) was () was not requested. If
4 requested, any changes made by the deponent (and
5 provided to the reporter) during the period allowed, are
6 appended hereto. (Fed. R. Civ. P. 30(e)).

7

8 Dated: JANUARY 13, 2012

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Chernee P. Peterson

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